Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-296

ARAM K. BERBERIAN,
PETITIONER,

v.

RHODE ISLAND BAR ASSOCIATION,
RESPONDENT.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT FOR THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

RHODE ISLAND BAR ASSOCIATION
By its Attorneys,
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Providence, Rhode Island 02903

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Statement of the Case

This is a petition for the issuance of a writ of certiorari to the Rhode Island Supreme Court seeking a review of the order of that Court dated June 23, 1975, which suspended petitioner, Aram K. Berberian (hereinafter referred to as "Berberian") from the membership in the unified bar of Rhode Island and from the practice of law in Rhode Island

for failure to comply with the unification order which required the payment of dues unless he paid his dues prior to July 1, 1975 (A. 12). Berberian has complied with that order and paid his dues (A. 9 to A. 11).

On August 28, 1970, the Rhode Island Bar Association (hereinafter referred to as the "Association"), a Rhode Island non-business corporation, which was comprised of a voluntary group of Rhode Island lawyers, petitioned the Supreme Court of Rhode Island seeking to "unify" the Rhode Island Bar. The Supreme Court of Rhode Island deliberated carefully on this petition for nearly three years, and took great efforts to insure that every Rhode Island lawyer had an opportunity to express his views on the issue. The Association notified all Rhode Island attorneys of the petition and of their opportunity to oppose it. It polled all Rhode Island attorneys asking their opinion of unification. Counsel were assigned to oppose the petition, briefs were filed and arguments were heard by the Supreme Court for and against the petition. After these steps were taken the Supreme Court of Rhode Island, still concerned that every Rhode Island attorney be adequately notified, issued an order dated July 6, 1971 which stated:

> "Accordingly, if the petitioner (the Association) desires to pursue its petition, then it shall prepare and mail copies of the instant petition and of the proposed constitution and by-laws to all members of the Rhode Island bar, whose addresses are known to it, and that it make copies of its brief and that of its opponents available without cost to all members of the Rhode Island bar on request. Additionally, petitioner and opponents shall prepare a form of ballot, for our approval, to be mailed to all members of the Rhode Island bar concurrently with the copies of the instant petition, proposed constitution and by-laws, offering such members an opportunity of expressing their opinion for or against unification. Pending the completion of the suggested procedure and the new vote, we reserve jurisdiction of this petition and withhold decision on the merits". (A. 19).

The Association complied with the Court's order[1] and subsequently on June 28, 1973 the Rhode Island Supreme Court granted the petition unifying the Rhode Island Bar effective October 1, 1973 on the condition that no member be suspended or removed unless such action is first approved by the Rhode Island Supreme Court (hereinafter referred to as the "unification order"), 111 R.I. 936, 306 A.2d 199 (1973).

Berberian had every opportunity to present his views before the Rhode Island Supreme Court prior to the issuance of the unification order, and he chose not to do so, neither did he seek any immediate review of that order.

On or about November 1, 1973, Berberian brought suit against the Association in the United States District Court for the District of Rhode Island. In his complaint Berberian sought to have the District Court declare unconstitutional the unification order of the Rhode Island Supreme Court dated June 28, 1973. In addition, Berberian sought a preliminary and permanent injunction, restraining and enjoining the officers of the Association from taking any disciplinary action against Berberian for failure to pay dues. (See Berberian's Complaint, pp. A. 20 to A. 22).

In lieu of an answer, the Association made a motion to dismiss the complaint pursuant to F.R.C.P. 12(b)(6) (A. 23). The trial justice, after oral argument, granted the Association's motion to dismiss. (The unreported decision of the District Court appears at A. 24 to A. 31).

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[1] Berberian intimates that he was unaware of the unification petition but the affidavit of Edward P. Smith, Executive Director of the Association indicates that the mailing required by the Supreme Court was undoubtedly sent to Berberian. (A. 13).

Berberian then appealed to the United States Court of Appeals for the First Circuit. After briefs were filed and oral arguments were heard, a memorandum decision was entered by the Circuit Court on April 3, 1974, dismissing Berberian's appeal and affirming the decision of the trial justice. (The unreported decision of the Circuit Court appears at pp. A. 32 to A. 33). Berberian did not seek review of the decision of the Court of Appeals in the Supreme Court of the United States, either by way of appeal or certiorari.

On June 12, 1974, the Association petitioned the Rhode Island Supreme Court seeking to have certain individuals, including Berberian, suspended from the practice of law for failure to comply with the unification order for non-payment of dues. The Supreme Court then issued an order directing Berberian and others to show cause why they should not be suspended for failure to comply with the unification order. Berberian answered the show-cause order (Petitioner's Appendix E) to which the Association responded (A. 34 to A. 36). Briefs were then filed by Berberian and by the Association and the matter was argued before the Supreme Court of Rhode Island. Thereafter, on June 23, 1975, the Supreme Court of Rhode Island entered its order suspending Berberian from membership and from the practice of law unless he paid his dues on or before July 1, 1975. R.I. , 339 A.2d 277 (1975) (hereinafter referred to as the "suspension order"). It is this suspension order which Berberian seeks to have reviewed by this Court.

Reasons Why the Writ of Certiorari Should Not Be Issued

There are numerous reasons why the Supreme Court of the United States should not issue its writ of certiorari in this matter.

1. At the outset it must be said that the issue is now moot. The suspension order which Berberian seeks to have reviewed merely ordered him to pay his dues to the Rhode Island Bar Association. Since Berberian has paid those dues, he is no longer under threat of a suspension and he has in fact complied with the order and the issue is consequently moot. (A. 9 to A. 11).

2. Berberian has alleged in his petition that the unification order of the Rhode Island Bar violates various provisions of the United States Constitution but he did not seek review of the unification order. Berberian had his opportunity to oppose the Association's petition before the Rhode Island Supreme Court prior to the entry of its unification order. Furthermore Berberian had his day in court and challenged the constitutionality of the unification order in the District Court of the United States and in the United States Circuit Court of Appeals, on this very issue. He chose not to seek review in the Supreme Court of the United States. Berberian, therefore, is estopped by the doctrines of res judicata, collateral estoppel and laches from asserting his contention that the unification order is invalid. The issue has been tried by these very parties already. He has had his opportunities to make these arguments both in state and federal courts. As such the unification order is not presently at issue and its validity must be accepted.

3. The Supreme Court of the United States does not have jurisdiction to grant writ of certiorari pursuant to 28 U.S.C. §1257(3), to review the suspension order. In light of the validity of the unification order, the suspension order cannot be challenged on any federal grounds and no privilege, right or immunity secured by the Constitution, treaties or laws of the United States, can be asserted as a defense to that order.

4. Even if this Court were to determine that Berberian could raise the issue of the constitutionality of the unification order on review of the suspension order which merely required Berberian to pay his dues, the Court still should not issue its writ of certiorari. The United States Supreme Court Rule 19 indicates the character of the reasons which will be considered in granting a writ of certiorari. The rule states that the writ will be granted where "a state court has decided a federal question of substance not theretofore determined by this Court, or has decided it in a way probably not in accord with applicable decisions of this court".

In *Lathrop* v. *Donahue,* 367 U.S. 820, 81 S. Ct. 1826, 6 L.Ed2d 1191 (1961), the Supreme Court of the United States held that integration of a state bar association does not impinge upon an attorney's freedom of association and therefore decided all issues raised by Berberian. Berberian seeks to differentiate *Lathrop* v. *Donahue* from the instant case by saying that in *Lathrop* the Supreme Court was dealing with integration of a bar while the instant case deals with unification of a bar. Berberian has made no attempt to delineate the distinction between integration and unification. The Association asserts that there is no such distinction and that the terms are synonymous. The Court of Appeals concurred with the position of the Association. In its opinion it stated that it could find no valid distinction between the two terms and it held that *Lathrop* was controlling (A. 32 to 33). Berberian has presented no reasons why the decision in *Lathrop* should not be dispositive of the issues raised herein.

5. Berberian also alleges that his due process rights were violated by the unification order. Judge Day found as a matter of fact and as a matter of law that all effort was made to protect the due process rights of members of the Rhode sland Bar by the Rhode Island Supreme Court prior to its issuing the unification order, and that all due

process rights in disciplinary proceedings pursuant to that order were guaranteed by the Rhode Island Supreme Court. (A. 30). These findings were affirmed by the First Circuit. Furthermore, in this very disciplinary proceeding of which Berberian seeks review, all effort was made to guarantee Berberian's due process rights. The court accepted briefs and heard oral argument. Berberian had every opportunity to argue his case prior to any suspension. Furthermore, the Rhode Island Supreme Court's action was conditional in that no suspension would ensue if Berberian paid his dues, which he did.

6. Finally, the case law in this area is firmly against Berberian's position. It is well established that a license holder is subject to the imposition of reasonable regulations and conditions subsequent to the issuance of the license, and that fact does not infringe upon any of his contractual rights. *Smith* v. *California,* 336 F.2d 530, 534 (9th Cir. 1964). Furthermore, in every case where unification has been challenged, the inherent power of the highest court of the state to order the unification of its bar without legislative authorization or direction has been upheld. *In re Unification of New Hampshire Bar,* 109 N.H. 260, 248 A.2d 709 (1968); *In re Integration of Bar of Hawaii,* 50 Hawaii 107, 432 P.2d 887 (1967); *Integration of the Bar Case,* 244 Wis. 811 N.W. 2d 604 (1943); *Petition of the Florida State Bar Ass'n.,* 40 So. 2d 902 (Fla. 1949); *In re Integration of Nebraska State Bar Ass'n.,* 133 Neb. 283, 275 N.W. 265 (1937); and *In re Integration of the State Bar of Oklahoma,* 185 Okla. 505, 95 P.2d 133 (1939).

Berberian contends that the unification order in essence constitutes unlawful taxation. This argument must be rejected. The Supreme Court of Arkansas was permitted to raise the annual license fee for attorneys from $2.00 to $17.00 in order to support a full-time executive secretary for the Committee on Professional Conduct. It was held

that it was within the inherent power of the Court to impose a reasonable regulation which required attorneys to pay a fee in order to continue the practice of law. *In re Supreme Court License Fees*, 483, S.W.2d 174 (Ark. 1973).

7. Berberian has alleged that the unification order deprived him of a fundamental right guaranteed by the Ninth Amendment to the United States Constitution. This contention is wholly without merit as Berberian fails to set forth what right he has been deprived of.

In summary, the Association contends that Berberian has waived every opportunity to seek review of the validity of the unification order of the Rhode Island Supreme Court. Therefore, at issue is only the suspension order which is a moot issue and outside the Court's jurisdiction. Furthermore, even were the unification order to be before the Court Berberian's contentions attacking the constitutionality and validity of the unification order are without any merit or supporting authority. In fact, wherever legally challenged, unification orders have been universally upheld.

Conclusion

For the reasons and authorities set forth herein, respondent Rhode Island Bar Association urges this Honorable Court to deny the petition and to refuse to issue its writ of certiorari.

Respectfully submitted,

RHODE ISLAND BAR ASSOCIATION
By its Attorneys,
DANIEL J. MURRAY
RICHARD A. LICHT
LETTS, QUINN & LICHT
830 Hospital Trust Building
Providence, Rhode Island 02903

Dated: September 16, 1975

APPENDIX A

Payment made to R.I. Bar Assn under protest Aram K. Berberian

Received in payment re dues due December, 1973, subject of R.I. Supreme Court petition and order. Edward P. Smith executive director Rhode Island Bar Association

CO-OP CREDIT UNION
CRANSTON, RHODE ISLAND 02910

Loan for Dues for ARAM K. BERBERIAN 01 2815 73 27 01 005 03

Pay to the order of Rhode Island Bar Association — $65.00 — Dollars

June 30 1975 27-7327/2115

Sixty-five & 00/100

Aram Berberian

226

BEST COPY AVAILABLE

APPENDIX B

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
SUPREME COURT

M.P. #74-159

In Re:

PETITION OF RHODE ISLAND BAR ASSOCIATION
v.
ARAM K. BERBERIAN

AFFIDAVIT OF COMPLIANCE

I, Aram K. Berberian on oath make affidavit and say that on 1 July 1975 I handed to a person in charge of the office of the Rhode Island Bar Association a check for $65.00, under protest, in accordance with the order of this court of 23 June 1975.

(s) ARAM K. BERBERIAN
ARAM K. BERBERIAN

STATE OF RHODE ISLAND
PROVIDENCE SS:

Sworn and subscribed to before me this 1st day of July 1975 by Aram K. Berberian.

(s) ILLEGIBLE
Notary Public

A true copy
Attest:
(s) WALTER J. KANE
Clerk

APPENDIX C

SUPREME COURT
No. 74-159-M.P.

In Re:

PETITION OF RHODE ISLAND BAR ASSOCIATION

ORDER

The motion of the Rhode Island Bar Association that Aram K. Berberian be suspended from membership and the practice of law for failure to comply with the bylaws of the Association, in that he failed to pay his dues, is granted, unless said Aram K. Berberian shall pay said dues on or before July 1, 1975.

Entered as the order of this court this 23rd day of June, 1975.

By Order,
(s) WALTER J. KANE
WALTER J. KANE
Clerk

Enter:
(s) THOMAS H. ROBERTS
THOMAS H. ROBERTS
Chief Justice
June 23, 1975

APPENDIX D

AFFIDAVIT

I, EDWARD P. SMITH of Providence, Rhode Island, on oath do depose and say that:

1. I am the Executive Director of the Rhode Island Bar Association and have held that position since prior to the filing in the Supreme Court of Rhode Island of the Association's petition for unification of the Rhode Island Bar.

2. In my capacity as Executive Director, I was in charge and supervised the mailing of all notices which were mailed in 1971 by the Bar Association to members of the Rhode Island Bar in connection with the unification petition as required by the Rhode Island Supreme Court in its order dated July 26, 1971.

3. In supervising the aforesaid mailings, I made sure that each and every mailing was sent to all individuals listed as attorneys in the yellow pages of all phone books for Rhode Island.

4. Aram K. Berberian was listed as an attorney practicing law at 906 Reservoir Avenue, Cranston, Rhode Island, in the Providence yellow pages published June, 1971, which included all Cranston listings.

(s) EDWARD P. SMITH

STATE OF RHODE ISLAND
PROVIDENCE, SC.

Subscribed and sworn to before me at Providence, Rhode Island, this 12th day of September, 1975.

(s) DANIEL J. MURRAY
Notary Public

APPENDIX E

PETITION OF THE
RHODE ISLAND BAR ASSOCIATION
Supreme Court of Rhode Island
July 6, 1971

Daniel J. Murray, Providence, Paul F. Murray, Newport, John H. Blish, A. David Tammeleo, Providence, for petitioner.

Oliver Crandall, Westerly, Ronald W. Del Sesto, Thomas D. Gidley, Albert A. Nutini, John J. Pendergast, III, Providence, for respondent.

ORDER

On August 28, 1970, the Rhode Island Bar Association, a statewide association of attorneys, who are licensed to practice before the courts of this state, filed a petition with this court requesting us to enter an order directing unification of the bar of this state under such terms and conditions as we shall deem proper.

The petition includes the following pertinent allegations. The Rhode Island Bar Association was organized in 1898 and was incorporated under the laws of this state as a nonbusiness corporation. Its membership presently numbers 1,000 of the approximately 1,300 attorneys admitted to practice before our state courts. The present annual dues is $50 with lesser dues for members who have practiced for less than five years. The petition continues with a description and explanation of the numerous programs and activities which the petitioner has sponsored and intends to sponsor in the future, all related to the welfare and benefit of the bar and the general public, and to the better administration of justice.

The petitioner further alleges that all these programs and activities inure to the benefit of all Rhode Island at-

torneys whether or not they are members of petitioner, and, therefore, each member of the bar should contribute his fair share of annual dues to cover the cost of such programs and activities. It states that the purpose of unification is to enable the bar association to more effectively serve the court, the bar and the public by reinforcing programs, by more widespread participation by the bar, and by providing financial support for the necessary activities enumerated in this petition.

The petitioner points out that unification of the bar has been the method adopted by 30 states, Puerto Rico and the Virgin Islands, and that approximately one half of the remaining 20 states are instituting proceedings for unification.

The petitioner explains that unification of the bar simply requires that all attorneys now or hereafter admitted to practice in this state shall become members of the Rhode Island Bar Association and maintain their membership by the payment of annual dues.

The petitioner next explains the procedure it adopted and followed prior to the filing of the instant petition. On November 19, 1969, it appointed a special committee of lawyers to consider the feasibility of unification of the bar. After consulting with the Chief Justice of this court, the special commitee met with local bar associations and other representatives of the practicing bar throughout the state. After careful consideration this special committee recommended to petitioner that the bar of this state be unified.

The petitioner thereafter forwarded to each member of the bar of this state, whether a member of petitioner or not, whose address was known to petitioner, a pamphlet and a postage prepaid card on which such member of the bar could indicate his/her approval of unification. A copy of each is attached to the instant petition as "Exhibit A." The pamphlet, which is entitled, "The Rhode Island Bar

Should Be Unified," contains a summary of the programs and activities which petitioner has carried on and explains the reasons why unification of the bar should be ordered. The pamphlet also contains the following request:

> "If you are in favor of getting the maximum benefit from our Association by unifying all our efforts, please send us the enclosed post card right away."

The post card reads as follows:

"Name .....
(Legibly please)

"Address .....
" ....."

Over 1,000 communications were mailed. In response 518 members of the bar indicated their approval and 30 indicated disapproval.

The petitioner, acting through its Executive Committee, voted to accept and approve the report of the special committee that the Rhode Island Bar be unified and directed that a petition praying for unification of the bar be filed with this court. In accordance with such action the instant petition was filed in this court. In addition to the request for an order for unification, petitioner asked that we enter an order assigning this petition for hearing and providing for notification to those who may wish to be heard.

On October 14, 1970, an order was entered in this court giving notice to members of the Rhode Island bar and to any and all persons interested that the instant petition had been filed in this court. We provided therein that any interested person would be allowed 50 days from the date of said order to file a written memoradum herein setting forth his reasons or grounds, if any, why this court should not enter an order granting the petition as prayed. We

also provided therein that petitioner would be allowed 20 days thereafter in which to file its memorandum in support of the petition. Additionally, by an order entered on the same day, we directed petitioner to insert a copy of such order in two newspapers of statewide circulation in this state within the following 10 days. The petitioner complied with this order. No memoranda in opposition to the petition were filed within the prescribed period.

On December 18, 1970, we requested petitioner to designate attorneys to prepare briefs and argue orally the reasons why we should or should not grant the petition. The petitioner complied with our request and designated distinguished counsel to carry out this assignment.[1] Excellent briefs were filed by the designated counsel and, on April 7, 1971, they presented their oral arguments before us.

[1] We have read and considered the briefs of opposing counsel and take this occasion to express our appreciation to all counsel who have given of their time and efforts in aiding the court in this matter. Although this court has the power to order unification of the bar of this state, Rhode Island Bar Ass'n v. Automobile Service Ass'n, 55 R.I. 122, 179 A. 139, In re Rhode Island Bar Association, R.I., 263 A.2d 692, the question before us is whether we should exercise our power to do so in this proceeding. We recognize that many states have already sanctioned unification of their bars just as we recognize the fact that other states are in the process of doing so.

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[1] The following attorneys were designated to prepare briefs and argue orally in favor of the petition:

Daniel J. Murray — John H. Blish
Paul F. Murray — A. David Tammelleo

The following were designated to prepare briefs and argue orally in opposition thereto:

Oliver Crandall — Thomas D. Gidley
Ronald W. Del Sesto — Albert A. Nutini
John J. Pendergast III

We have reached no conclusion, as yet, as to whether unification of the bar should or should not be ordered in this state on the basis of the present record. The relief sought by petitioner involves a drastic change in that any person desiring to practice law in this state will be compelled by law to be a dues-paying member of the Rhode Island Bar Association. We are not satisfied that a poll, such as was taken by petitioner, indicating that 518 members of the bar favored unification, and 30 opposed, is an adequate expression of the feelings and sentiments of the lawyers presently licensed to practice in this state. Approximately 752 members of the bar of this state have not expressed an opinion one way or the other. The notice on the post card indicates that petitioner sought replies only from those members of the bar who were in favor of unification. So construed it would appear that approximately 752 members of the bar did not approve unification.

[2] Since the proposed change is a drastic one, we believe that we should have the benefit of a broader expression of opinion from the members of the bar after the members themselves have been better informed by petitioner of the proposed change and the contents of its proposed by-laws and constitution. We have read many of the cases cited by the opposing parties and are especially impressed with the procedure followed by the New Hampshire Bar Association. See In Re Unification of New Hampshire Bar, 109 N.H. 260, 248 A.2d 709. As the court noted in that acse, *id.* at 262, 248 A.2d at 711, the bar association itself established a procedure to be followed in connection with the presentation of the petition for unification. It included (1) mailing copies of the petition and by-laws to all members of the New Hampshire bar and Bar Association concurrently with its filing of the petition in the New Hampshire court, and (2) making

copies of its brief available without cost to all members of the New Hampshire bar on request.

We believe that a procedure substantially similar to the one used by the New Hampshire Bar Association would be not only adequate, but very helpful to the members of the bar of this state and to this court. Accordingly, if the petitioner desires to pursue its petition, then it shall prepare and mail copies of the instant petition and of the proposed constitution and by-laws to all members of the Rhode Island bar, whose addresses are known to it, and that it makes copies of its brief and that of its opponents available without cost to all members of the Rhode Island bar on request. Additionally, petitioner and opponents shall prepare a form of ballot, for our approval, to be mailed to all members of the Rhode Island bar concurrently with the copies of the instant petition, proposed constitution and by-laws, offering such members an opportunity of expressing their opinion for or against unification. Pending the completion of the suggested procedure and the new vote, we reserve jurisdiction of this petition and withhold decision on the merits.

APPENDIX F

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

Civil Action #5360
ARAM K. BERBERIAN
v.
RHODE ISLAND BAR ASSOCIATION

COMPLAINT

Aram K. Berberian of Seekonk, in the Commonwealth of Massachusetts represents to this court as follows:

1. On 11 October 1950 the Rhode Island Supreme Court granted to your petitioner a license to practice law in the courts in the state of Rhode Island. No fee therefore was or has been required from that time to October 1, 1973. The only conditions of continued licensure has been observance of the ethics of the profession and absence of convictions of crime involving moral turpitude. At the present time your petitioner is a member of the Rhode Island Bar in good standing.

2. Respondent Rhode Island Bar Association is a Rhode Island non-business corporation and is not a body politic, a labor union or a governmental agency.

3. Your petitioner is not now nor has ever been a member of the respondent Bar Association.

4. On 28 June 1973 the Rhode Island Supreme Court, pursuant to Petition of the Rhode Island Bar Association, 108 R.I. 947, 279 A.2d 432, unified the Rhode Island Bar to become effective 1 October 1973. Integration of the Bar was not mandated.

5. By virtue of the Constitution of respondent Bar Association the respondent Bar Association has no disciplinary power over members of the Rhode Island Bar other

than to petition the complaint of the Supreme Court and the Supreme Court itself for the imposition of discipline on such members of the Bar. In addition, the individual members of the respondent Bar Association have no power or right whatever to determine the policy of the Association other than to elect officers thereof annually.

6. By virtue of the Constitution & by laws of the respondent Bar Association your petitioner is required to pay to it sixty-five dollars ($65.00) per year for membership. Failure of your petitioner to pay the required annual fee will cause the respondent Bar Association to petition the complaint committee of the Rhode Island Supreme Court and the Rhode Island Supreme Court itself for suspension of your petitioner's license to practice law in the courts in the state of Rhode Island.

7. The respondent Bar Association is not actively concerned with the field of criminal law which is the petitioner's specialty. The respondent Bar Association has not advocated or effectuated any change or improvement in the criminal law and procedure in the state of Rhode Island.

8. Your petitioner is a member of the Rhode Island Defense Attorney's Association which was formed in 1972 for those who devote a substantial portion of their professional time with criminal defense work and have already effectuated improvements in criminal procedures in our state court. The annual dues of said association is forty ($40.00) dollars.

9. The Rhode Island Supreme Court order of 28 June 1973 impares the obligation of contract in violation of Article I, section 10 of the Constitution of the United States in that it requires your petitioner to pay to a non-governmenal agency an annual fee for the petitioner's right to continue in the practice of law by virtue of the license heretofore granted to him. Said order also denies your petitioner of liberty and property without due process of law

as guaranteed to him by Article XIV, section 1 of the Amendments to the United States Constitution. The aforesaid deprivation of Constitutional rights and immunities constitutes a violation of your petitioner's civil rights as guaranteed to him by 42 USCA 1983.

10. Your petitioner has refused and still refuses to pay to the respondent Bar Association the required annual fee.

11. The Supreme Court order of 28 June 1973 interferes with and infringes your petitioner's free right of association guaranteed to him by Article I of the Amendments to the United States Constitution which is made applicable to the states by virtue of Article XIV thereof.

12. Jurisdiction of this court is invoked under the provisions of 28 USC 2201, 2202, and 1343.

Wherefore your petitioner prays that this court:

1. Declare unconstitutional and invalid the order of the Rhode Island Supreme Court promulgated 28 June 1973 pursuant to Petition of the Rhode Island Bar Association 108 R.I. 947, 279 A.2d 432.

2. Issue a preliminary and permanent injunction restraining and enjoining officers of the respondent Bar Association, their agents or servants from petitioning the complaint committee of the Rhode Island Supreme Court and the Supreme Court itself for disciplinary action against your petitioner for failure to pay its annual membership fee.

(s) ARAM K. BERBERIAN
ARAM K. BERBERIAN

APPENDIX G

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

Civil Action File No. 5360
ARAM K. BERBERIAN,
Plaintiff,
v.
RHODE ISLAND BAR ASSOCIATION,
Defendant.

MOTION TO DISMISS COMPLAINT

The defendant moves the Court to dismiss the above-entitled action pursuant to Rule 12(b)(6) because the complaint fails to state a claim against defendant upon which relief can be granted. The grounds in support of this motion are set forth in an accompanying memorandum.

Attorney for Defendant,
(s) DANIEL J. MURRAY
DANIEL J. MURRAY
(s) LETTS, QUINN & LICHT
LETTS, QUINN & LICHT
830 Hospital Trust Bldg.
Providence, Rhode Island

To: Aram K. Berberian
906 Reservoir Avenue
Cranston, Rhode Island

Please take notice that the above Motion will be heard on December 3, 1973, in the Federal District Court for the District of Rhode Island before Judge Day at 10:00 a.m. or as soon thereafter as counsel may be heard.

(s) DANIEL J. MURRAY

APPENDIX H

STENOGRAPHIC TRANSCRIPT OF DECISION

[1] IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF RHODE ISLAND

Civil Action No. 5360
ARAM K. BERBERIAN,
Plaintiff,
v.
RHODE ISLAND BAR ASSOCIATION,
Defendant.

Before: HON. EDWARD W. DAY
District Judge
Providence, R.I., December 17, 1973

APPEARANCES:
For the Plaintiff: *Pro se.*
For the Defendant: Letts, Quinn & Licht
Daniel J. Murray, Esq.

DECISION OF THE COURT RE DEFENDANT'S MOTION TO DISMISS

[2] The Court: (Delivered orally from the bench)

This is a civil rights action pursuant to the provisions of the Fourteenth Amendment to the Constitution of the United States and Section 1983 of Title 42 of the United States Code, by which the plaintiff seeks declaratory and injunctive relief against the combined action of the Rhode Island Bar Association and the Supreme Court of Rhode Island under which a so-called "unified bar" was established in this state. The plaintiff invokes the jurisdiction

of this Court under the provisions of 28 U.S.C. §§ 2201, 2202, (declaratory judgments) and § 1343 (civil rights).

In an order entered June 28, 1973 the Rhode Island Supreme Court, pursuant to the petition of the defendant herein, the Rhode Island Bar Association, unified the Rhode Island bar, effective as of October 1, 1973. See *Petition of the Rhode Island Bar Association,* 306 A.2d 199 (1973). The order of the Rhode Island Supreme Court reads in relevant part as follows:

> "Upon further consideration of and in supplement to the order entered in Petition of the Rhode Island Bar Association, 108 R.I. 947, 279 A.2d 432 (1971), the petition for unification of the Rhode Island bar is granted, to [3] become effective October 1, 1973, upon the express condition that no member of the association shall be suspended or removed from membership until such action has been expressly approved by the Supreme Court."

Said "unification" was defined in an earlier order of the Supreme Court relative to the petition of the Rhode Island Bar Association in the following manner:

> "The petitioner explains that unification of the bar simply requires that all attorneys now or hereafter admitted to practice in this state shall become members of the Rhode Island Bar Association and maintain their membership by the payment of annual dues."

108 R.I. 947, 279 A.2d 432, 433 (1971).

In his complaint the plaintiff alleges that on October 11, 1950 the Rhode Island Supreme Court granted him "a license to practice law in the courts of the state of Rhode Island," that no fee therefor was or has been required, and that "the only conditions of continued licensure has been observance of the ethics of the profession [4] and absence of convictions of crime involving moral turpitude."

The plaintiff further alleges that he is a member of the Rhode Island Bar in good standing; that the defendant bar association is a Rhode Island nonbusiness corporation, not a body politic, a labor union or a governmental agency; and that he is not now, nor has ever been, a member of this bar association.

The plaintiff in his complaint further describes the defendant bar association as follows:

> "5. By virtue of the Constitution of respondent Bar Association the respondent Bar Association has no disciplinary power over members of the Rhode Island Bar other than to petition the complaint committee of the Supreme Court and the Supreme Court itself for the imposition of discipline on such members of the Bar. In addition, the individual members of the respondent Bar Association have no power or right whatever to determine the policy of the Association other than to elect officers thereof annually.
> [5] "6. By virtue of the Constitution & by laws of the respondent Bar Association your petitioner is required to pay to it sixty-five dollars ($65.00) per year for membership. Failure of your petitioner to pay the required annual fee will cause the respondent Bar Association to petition the complaint committee of the Rhode Island Supreme Court and the Rhode Island Supreme Court itself for suspension of your petitioner's license to practice law in the courts of the state of Rhode Island.
> "7. The respondent Bar Association is not actively concerned with the field of criminal law which is the petitioner's specialty. The respondent Bar Association has not advocated or effectuated any change or improvement in the criminal law and procedure in the state of Rhode Island."

In contrast the plaintiff asserts that the Rhode Island Defense Attorney's Association, of which he is a member, has effectuated improvements in criminal procedures in the state courts.

The plaintiff alleges that the June 28th unification [6] order violates his constitutional rights in the following respects: That said order

(1) impairs the obligation of contract in violation of Article I, Section 10, in that it requires him to pay to a nongovernmental agency an annual fee for his right to continue in the practice of law by virtue of the license granted him on October 11, 1950 by the Rhode Island Supreme Court;

(2) deprives him of liberty and property without due process of law, as guaranteed by the Fourteenth Amendment;

He further alleges that aforesaid deprivation of rights and immunities constitutes a violation of civil rights, as guaranteed by 42 U.S.C. § 1983; and interferes with and infringes his free right of association, as guaranteed by the First Amendment.

Additionally, the plaintiff alleges that he has refused, and still refuses, to pay the defendant bar association the required annual dues, and prays that this Court declare unconstitutional and invalid said order of the Rhode Island Supreme Court promulgated on June 28, 1973, and issue a preliminary and permanent injunction against the defendant bar association from petitioning the [7] complaint committee of the Rhode Island Supreme Court and the Supreme Court itself for disciplinary action against him for failure to pay its annual membership dues.

This matter is now before me on the defendant's motion to dismiss this action on the ground that said complaint fails to state a claim upon which relief can be granted.

As hereinbefore recited, the plaintiff in this action is attacking the constitutionality of the order by which the Supreme Court of this state established a so-called "unified bar" and not the method or manner by which such order has been, is now or will be enforced; that is, disciplinary proceedings initiated by the defendant bar association.

In effect the plaintiff's complaint rests on the theory that an order requiring all attorneys admitted to the practice of law in the state of Rhode Island to join and pay membership dues to a bar association exceeds the authority of the court issuing the order to regulate and control the practice of law within its jurisdiction.

A review of the authorities indicates in my opinion that it is well established that the several states, through both their judicial and legislative branches, may, within constitutional bounds, regulate and control the practice of law within their respective geographical territories and in the courts thereof. *Konigsberg* v. *State Bar of Calif.*, 366 U.S. 36 (1961); 7 *Am. Jur.* 2d, "Attorneys at Law," § 2.

[8] In the State of Rhode Island this power has been clearly recognized to be possessed by the Supreme Court of the State of Rhode Island. The Legislature of the State of Rhode Island has unequivocally delegated this power to the Rhode Island Supreme Court in *R.I. Gen. Laws of 1956,* Title 8, Chapter 1, Section 2, which provides in pertinent part as follows:

> "The Supreme Court shall . . . by general or special rules regulate the admission of attorneys to practice in all the courts of the state."

See, also, *Rhode Island Bar Association* v. *The Automobile Service Association,* 55 R.I. 122, 179 A. 139 (1935); *In re Rhode Island Bar Association,* 263 A.2d 692 (1970).

The Supreme Court of the United States in its opinion in *Lathrop* v. *Donohue,* 367 U.S. 820 (1961), ruled that pursuant to a state statute the Supreme Court of that state

could properly order the unification of the bar of that state, and that such unification order did not violate an attorney's freedom of association and speech.

In numerous instances it has been held that the highest court of a state has the inherent power to order unification of its bar without legislative authorization or direction. See, e.g., *In re Unification of New Hampshire Bar,* 109 N.H. 260, 248 A.2d 709, 711 (1968).

[9] In my opinion the *Lathrop* decision, hereinbefore cited, has settled the question regarding possible infringement of the First Amendment right of free association against the plaintiff.

The plaintiff makes a further contention that the unification order impairs the obligation of the contract purportedly entered into between him and the Supreme Court of Rhode Island at the time of his admission to practice before the courts of the State of Rhode Island in 1950. At that time the plaintiff took an oath agreeing to comply with certain standards of conduct. In my opinion to refer to this oath as a contract would appear to stretch the usual meaning of the term, "contract." Furthermore, even if the oath is regarded as an agreement between the Supreme Court of the State of Rhode Island and attorneys whom it admits to practice in this state, it is patently clear it was never intended to be a complete statement of the specific limits and duties which the state Supreme Court might impose on attorneys practicing in the state courts.

This fact, I think, is clearly evidenced by the action of the Supreme Court of the State of Rhode Island in "promulgating from time to time rules and regulations governing various aspects of the legal profession." See, e.g. *In re Adoption of the Code of Professional Responsibility,* 109 R.I. 968 (1972).

[10] In my opinion the unification order falls within this category of regulatory function which the Supreme

Court has traditionally exercised in its supervisory role with respect to attorneys. It is no breach of the oath taken by this plaintiff for the Supreme Court to add to or alter the specific rules and regulations it imposes upon lawyers whose practices and conduct it supervises. All that the state Supreme Court did in this instance was impose part of the cost of the administration of the supervisory system on the lawyers who will benefit from that system. Such imposition violates no contractual agreement between the plaintiff and the Supreme Court of Rhode Island.

Finally, the plaintiff claims that he has been deprived of property and freedom without due process of law, and that his civil rights have been violated.

It is clear that both the procedure followed by the Supreme Court of Rhode Island, in considering the promulgation of its unification order, as reported in 108 R.I. 947, 279 A.2d 432, and its provision for fair and adequate disciplinary proceedings satisfy the constitutional standards of due process. It is apparent that the Court carefully surrounded its promulgation of said order and also its disciplinary procedures for the enforcement of said order with procedural protections for the rights of attorneys affected by said order.

[11] The plaintiff makes no claim as to the manner in which he has been denied due process. It is clear that his rights were adequately protected during the consideration of the unification decision and will be shielded from any arbitrary action on the part of the defendant bar association with regard to the institution of any disciplinary proceedings.

After a careful consideration of the claims asserted in the instant complaint it is my conclusion that it is clear that the plaintiff is entitled to no relief under any state of facts which could conceivably be proved in support of the allegations of this complaint.

Accordingly, the defendant's motion to dismiss the complaint must be and is granted. The plaintiff's objection to the Court's ruling is noted. Counsel will prepare and present a suitable and proper order for entry.

I hereby certify that the foregoing 11 pages are a true and accurate transcript according to my stenographic notes.

(s) EUNICE J. ARCHAMBAULT
Official Court Reporter

APPENDIX I

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 74-1030

ARAM K. BERBERIAN,
Plaintiff, Appellant,
v.
RHODE ISLAND BAR ASSOCIATION,
Defendant, Appellee.

Before COFFIN, *Chief Judge,*
McENTEE and CAMPBELL, *Circuit Judges.*

MEMORANDUM and ORDER
Entered April 3, 1974

This is an appeal from a judgment dismissing appellant's complaint, pursuant to Rule 12(b)(6), Fed.R.Civ.P., for failure to state a cause of action upon which relief could be granted. Appellant sought a declaratory judgment that the Order of the Rhode Island Supreme Court, issued June 23, 1973, requiring all attorneys now or hereafter admitted to practice in the State of Rhode Island to become members of the unified Rhode Island Bar and pay annual membership dues, deprived appellant of his Constitutional rights under the First and Fourteenth Amendments, and impaired the obligation of contract, in violation of Article I, § 10 of the Constitution. We affirm.

The United States Supreme Court has held that "integration" of a state bar association does not impinge upon an attorney's freedom of association. *Lathrop* v. *Donohue,* 367 U.S. 820 (1961). Appellant argues that *Lathrop* is inapposite, since the present case deals with "unification" of a bar, and not "integration." But since we can find no

valid distinction between the two terms, as used by the Supreme Court in *Lathrop* and the Rhode Island Supreme Court, we deem *Lathrop* controlling.

Nor can we find that the Order of the Rhode Island Supreme Court deprives appellant of due process. Procedurally, the order was issued only after painstaking preliminaries of notice, hearings, and prolonged deliberation. The Rhode Island Supreme Court has specifically ordered that "no member of the Association shall be suspended or removed from membership [in the Association] until such action has been expressly approved by the Supreme Court." The rules of the Rhode Island Supreme Court provided that no attorney can be suspended or removed from practice without prior notice and a hearing, at which he is represented by counsel. 108 R.I. 947, 279 A.2d 432 (1973).

Finally, we do not find that appellant's right to contract has been impaired by the Order of the Rhode Island Supreme Court. The issuance, by the State, of a license to practice law does not create a contract between the State and the licensee. There is no violation of any contractual right when a license, such as that issued to appellant, is subject to reasonable regulations and conditions imposed subsequent to the issuance of the license. *Smith* v. *California,* 336 F.2d 530, 534 (9th Cir. 1964).

The judgment of the district court is affirmed.

By the Court:
(s) DANA H. GALLUP
Clerk

[cc: Messrs. Berberian and Murray.]

APPENDIX J

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
SUPREME COURT

M. P. No. 74-159

In re:

PETITION OF RHODE ISLAND BAR ASSOCIATION

v.

ARAM K. BERBERIAN

RESPONSE OF RHODE ISLAND BAR ASSOCIATION TO ARAM K. BERBERIAN'S ANSWER TO SHOW CAUSE ORDER

Statement of Case

This Honorable Court entered an order on June 28, 1973 granting the petition for unification of the Rhode Island Bar to become effective three months later, i.e. October 1, 1973. *Petition of Rhode Island Bar Association,* 306 A.2d 199 (1973).

Aram K. Berberian having failed to comply with the unification order, the Rhode Island Bar Association petitioned this Honorable Court for his suspension for failure to pay dues by petition dated June 12, 1974.

This court entered an order on June 20, 1974 directing Aram K. Berberian to show cause why he should not be suspended. He subsequently filed a document entitled "Answer to Show Cause Order" and the court requested the Rhode Island Bar Association to respond to the "Answer to Show Cause Order" and to file written memoranda.

The response of the Rhode Island Bar Association (herein called "petitioner") to Aram K. Berberian's "Answer to Show Cause" is couched in the form provided for by the Rhode Island Rules of Civil Procedure:

First Defense

1. The allegations of paragraph 1 of the "Answer to Show Cause Order" are denied.

2. The allegations of paragraph 2 thereof are denied.

3. The allegations of paragraph 3 thereof are denied.

4. With respect to paragraph numbered 4 thereof the statute which established Rhode Island Legal Services Inc. provides for appointment by the Rhode Island Bar Association of eight members of a board of directors consisting of 23 members. Rhode Island Legal Services Inc. engages in the public interest practice of law for which it collects no fees. In cases where statutes provide for payment of attorneys fees by unsuccessful defendants or where courts order such attorneys fees to be paid by unsuccessful defendants, such fees are collected by Rhode Island Legal Services Inc. All other allegations of paragraph 4 are denied.

5. With respect to paragraph 5 thereof complaints have been brought by plaintiffs who are without means to employ counsel. Such complaints are without cost to such plaintiffs and are brought by Rhode Island Legal Services Inc. Complaints have been brought to restrain Aram K. Berberian (1) from violating the statutory provision against "self-help" eviction, (2) for damages flowing therefrom which would accrue to the plaintiffs and (3) alleging that the actions of Berberian which were the subject of the complaints constituted contempt of court. No funds of the Rhode Island Bar Association are paid to or used by Rhode Island Legal Services Inc. All other allegations of paragraph 5 are denied.

6. With respect to paragraph 5, the Rhode Island Bar Association did intervene as amicus curiae in *Berberian* v. *New England Telephone and Telegraph Company,* 330 A.2d 813 (R.I. 1975) in which case this Honorable Court found against Aram K. Berberian. All other allegations of paragraph 6 are denied.

7. The allegations of paragraph 7 thereof are denied.

8. The allegations of paragraph 8 thereof are denied.

9. The allegations of paragraph 9 thereof are denied.

10. With respect to paragraph 10 thereof a search of the records of the Rhode Island Bar Association has been undertaken and no such application is on file with said Association.

11. With respect to paragraph 11 thereof, petitioner admits that it advertises the Lawyer Referral Service in the yellow pages of the telephone directories and denies the remaining allegations of the paragraph.

12. With respect to paragraph 12 thereof, petitioner alleges that the court-ordered notices should have reached Aram K. Berberian in the normal course of mail. Actual knowledge was had by Aram K. Berberian on November 1, 1973 by reason of his having served petitioner with the complaint which he filed in the Federal Court. The remaining allegations of paragraph 12 are denied.

Second Defense

The answer of Aram K. Berberian to the "Show Cause Order" fails to show a sufficient cause for Aram K. Berberian's failure to pay dues and the petition of the Rhode Island Bar Association should be granted.

Third Defense

Aram K. Berberian is guilty of laches since the unification order was entered on June 28, 1973.

Respectfully submitted,
RHODE ISLAND BAR ASSOCIATION
(s) DANIEL J. MURRAY

Dated: May 27, 1975